

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ALEX PERRY NEAL

v.

JOSEPH SUTER CLAGGETT

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Civil Action No. 4:20-CV-614

(Judge Mazzant/Judge Nowak)

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On January 18, 2021, the report of the Magistrate Judge (Dkt. #18) was entered containing proposed findings of fact and recommendations that Plaintiff Alex Perry Neal's case be dismissed without prejudice. Specifically, the Magistrate Judge recommended Plaintiff's case be dismissed due to (1) Plaintiff's non-compliance with the Local Rules; (2) the Court's lack of authority to prosecute or otherwise initiate criminal proceedings; and (3) failure to file an amended complaint as directed by the Court's order (Dkt. #18).

After issuance of the Magistrate Judge's report, the Fifth Circuit clarified the proper scope of dismissal under Rule 41(b) for failure to comply with local rules. *Campbell v. Wilkinson*, No. 20-11002, 2021 WL 650106, at *2 (5th Cir. Feb. 19, 2021). Specifically, the *Campbell* Court found the dispositive inquiry is whether failure to comply with the local rule is properly characterized as a failure to prosecute. Here, even if the Court were to find Plaintiff's failure to comply with the local rules is not properly characterized as a failure to prosecute, the Magistrate Judge has recommended two additional bases for dismissal: the Court lacks authority to commence criminal proceedings, and Plaintiff's failure to file an amended complaint contrary to the Court's

order. Upon consideration of these grounds, the Court agrees Plaintiff has failed to prosecute his case.

Having received the report of the United States Magistrate Judge, and no objections thereto having been timely filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge related to the Court's lack of authority to prosecute or otherwise initiate criminal proceedings and failure to file an amended complaint as directed by Court order are correct and adopts the Magistrate Judge's report as to these findings and conclusions of the Court.

It is therefore **ORDERED** that Plaintiff Alex Perry Neal's case is **DISMISSED WITHOUT PREJUDICE**.

All relief not previously granted is **DENIED**.

The Clerk is directed to **CLOSE** this civil action.

IT IS SO ORDERED.

SIGNED this 1st day of March, 2021.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE